HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 99(M/B) 2002

1. Madhvanand Tiwari S/o Sri Tikaram,
   R/o village Kohlikulari, Poorngiri,
   P.O. Kotkendriya,
   District Champawat.
2. Harish Chandra Tiwari S/o Sri Ram Dutt,
   R/o village Kohlikulari, Poornagiri,
   P.O. Kotkendriya,
   District-Champawat. …. Petitioners.

Vs.

1. State of Uttaranchal, through
   Secretary Forest Department.
2. Divisional Forest Officer,
   South Pithoragarh Forest Division,
   Pithoragarh,
   Distt. Pithoragarh. ….
   Respondents

Sri S.K. Posti, Ad. for the petitioners,
Learned C.S.C. for the respondents.

Dated: March 3, 2004:

Hon'ble M.M. Ghildiyal, J.
Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Posti, learned counsel for the petitioners and learned Chief Standing Counsel for the respondents.

This writ petition has been filed by the petitioners seeking a writ, order or direction in the nature of mandamus commanding the respondents to decide the application of the petitioners and give permission to remove those old trees standing on their 'Bhoomidhari' land and which are dangerous to the file and property to the petitioners.

The petitioners have sought permission in the year 1997 from the respondent no. 2 u/s 5 of the U.P. Protection of Trees in Rural & Hill Areas Act, 1976 for removal of 5 dry trees, which existed in the recorded land of the petitioners, but no action was taken by the respondents and the petitioners were compelled to file the present writ petition.

In the writ petition, the respondents have filed a counter affidavit stating therein that proceedings under Section Public

Premises Act in respect of the land in possession of the petitioners were initiated against the petitioner.

Counsel for the petitioner has admitted that the Prescribed Authority has held that the land belong to the petitioners. Thereafter, the State Government has filed an appeal before the District Judge, Pithoragarh but the same was also dismissed on 24th August 2000. Again the State Government has filed a writ petition no. 617 (M/S) 2002 which has also been dismissed by this Court on 11th June 2003.

The respondents have rejected the application of the petitioners on the ground that the land belongs to forest Department, therefore, permission for felling of trees cannot be granted to the petitioners.

In view of the aforesaid facts and circumstances, the respondents are directed to reconsider the application of the petitioners in the light of the judgment passed by this court in writ petition no. 617 (M/S) 2002 within a period of six weeks from the date of filing the certified copy of this order.

With these directions, the writ petition is disposed of finally.

March 3, 2004: **(R.T., J.)** **(M.M.G., J.)**
NCM: